

## Message Text

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TO AMCONSUL HONG KONG IMMEDIATE

UNCLAS STATE 054689

FOR DEPUTY ASSISTANT SECRETARY MILLER

E.O. 11652: N/A

TAGS:OCON, OTRA, XC

SUBJECT: APCAC MEETING AND DEPUTY ASSISTANT SECRETARY  
MILLER

REF: HONG KONG 9369

1. IN RESPONDING TO APCAC INTEREST IN U.S. BUSINESS BRIBES  
AND DISCLOSURE POLICY, YOU MAY WISH TO DRAW ON TESTIMONY  
OF DEPUTY SECRETARY INGERSOLL MADE TODAY BEFORE SUB-  
COMMITTEE ON PRIORITIES AND ECONOMIES IN GOVERNMENT OF THE  
JOINT ECONOMIC COMMITTEE. OTHER POINTS RAISED REFTEL WILL  
BE DEALT WITH IN SEPARATE MESSAGE.

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2. BEGIN QUOTE FIRST, LET ME AGAIN STATE EMPHATICALLY THAT  
THE DEPARTMENT OF STATE CONDEMNS IN THE STRONGEST TERMS ANY  
AND ALL CORRUPT PRACTICES INVOLVING CORPORATIONS, WHETHER  
U.S. OR FOREIGN. WE HAVE STATED THIS POSITION IN SEVERAL

FORUMS RECENTLY, BUT I WANT TO REITERATE IT HERE AS THE BASIS FOR ALL THE COMMENTS I MAKE TO YOU TODAY. THE DEPARTMENT'S VIEW -- AND MY OWN PERSONAL VIEW AS ONE WITH EXPERIENCE IN BUSINESS AND GOVERNMENT -- IS THAT BRIBES OR OTHER ILLICIT PAYMENTS CANNOT BE CONDONED. MOREOVER, THIS IS NOT A NEW POLICY. THE DEPARTMENT OF STATE HAS NEVER CONDONED SUCH PAYMENTS.

- THEY ARE ETHICALLY WRONG;
- THEIR DISCLOSURE CAN UNFAIRLY TARNISH THE REPUTATIONS OF RESPONSIBLE AMERICAN BUSINESSMEN;
- THEY MAKE IT MORE DIFFICULT FOR THE UNITED STATES GOVERNMENT TO ASSIST U.S. FIRMS IN THE LAWFUL PURSUIT OF THEIR LEGITIMATE BUSINESS INTERESTS ABROAD;
- THEY ENCUMBER OUR RELATIONS WITH FRIENDLY FOREIGN GOVERNMENTS;
- THEY ARE, IN THE LONG RUN, BAD BUSINESS, AS FIRMS INVOLVED IN SUCH PRACTICES RISK LOSS OF CONTRACTS, SALES AND EVEN PROPERTY;
- THEY CONTRIBUTE TO A DETERIORATION OF THE GENERAL INVESTMENT CLIMATE.

3. THE U.S. GOVERNMENT HAS TAKEN THE POSITION THAT ANY INVESTOR WHO MAKES ILLEGAL PAYMENTS CANNOT LOOK TO THE U.S. TO PROTECT HIM FROM LEGITIMATE LAW ENFORCEMENT ACTIONS BY THE RESPONSIBLE AUTHORITIES OF EITHER THE HOST COUNTRY OR OF THE UNITED STATES. WE SUPPORT COOPERATION BY THE UNITED STATES AGENCIES INVESTIGATING THESE CASES WITH RESPONSIBLE FOREIGN AUTHORITIES SEEKING INFORMATION CONSISTENT WITH THE REQUIREMENTS OF THE LAWS AND PROCEDURAL FAIRNESS.

4. HOWEVER, THE UNITED STATES GOVERNMENT WILL PROVIDE APPROPRIATE DIPLOMATIC PROTECTION TO AMERICAN NATIONALS ABROAD WHO ARE NOT TREATED FAIRLY IN ACCORDANCE WITH INTERNATIONAL LAW. WE ARE CONCERNED AT THREATS OF EXTRA-UNCLASSIFIED

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JUDICIAL SANCTIONS WHICH MAY BE DISPROPORTIONATE TO THE OFFENSE AND BASED ON UNPROVED ALLEGATIONS. WE DO NOT BELIEVE THAT ECONOMIC RETALIATION IS AN APPROPRIATE RESPONSE TO PAYMENTS WHICH, ALTHOUGH CONTROVERSIAL, ARE EITHER LAWFUL UNDER THE FOREIGN LAW CONCERNED, OR IF UNLAWFUL, ARE SUBJECT TO SPECIFIC CIVIL OR CRIMINAL PENALTIES PRESCRIBED BY THAT LAW. OF COURSE, WE ALSO OPPOSE SUCH RETALIATION FOR FAILURE TO MAKE SUCH PAYMENTS, AS ALLEGED IN SOME RECENT CASES. THE DEPARTMENT OF STATE HAS A RESPONSIBILITY TO ASSIST AMERICAN BUSINESSMEN WHO ARE TREATED UNFAIRLY.

5. IN INTERNATIONAL DISCUSSIONS OF ENTERPRISE BEHAVIOR, THE U.S. HAS SUPPORTED TWO BASIC PRINCIPLES:

-- FIRST, ALL SOVEREIGN STATES HAVE THE RIGHT TO SUPERVISE AND REGULATE THE ACTIVITY OF FOREIGN INVESTORS IN THEIR TERRITORY, CONSISTENT WITH THE MINIMUM STANDARDS OF JUSTICE CALLED FOR BY INTERNATIONAL LAW; AND  
-- SECOND, INVESTORS MUST RESPECT THE LAWS OF THE NATIONS IN WHICH THEY OPERATE AND CONDUCT THEMSELVES AS GOOD CORPORATE CITIZENS OF THESE NATIONS, REFRAINING FROM

IMPROPER INTERFERENCE IN THEIR INTERNAL AFFAIRS.

6. UNFORTUNATELY, HOWEVER, IN THESE MATTERS FOREIGN INVESTORS AND TRADERS ARE NOT ALWAYS FACED WITH CLEAR-CUT CHOICES IN UNAMBIGUOUS CIRCUMSTANCES. INSTEAD THEY FREQUENTLY FIND THEMSELVES OPERATING UNDER UNCLEAR RULES, AND LOCAL CUSTOMS AND BUSINESS METHODS FAR REMOVED FROM THOSE LEARNED IN BUSINESS SCHOOL. A FOREIGN INVESTOR WHO RECEIVES QUOTE SUGGESTIONS UNQUOTE FROM OFFICIALS OF THE HOST GOVERNMENT IS PLACED IN A DIFFICULT POSITION. MANY COURAGEOUS BUSINESSMEN HAVE REFUSED TO GO ALONG WITH QUESTIONABLE PRACTICES ABROAD, AND IN SOME CASES HAVE HAD TO FOREGO BUSINESS OPPORTUNITIES AS A RESULT.

7. WE ARE TOLD THAT BUSINESSMEN FROM OTHER COUNTRIES TAKE THE VIEW THAT WHAT WE CALL QUOTE IMPROPER UNQUOTE PAYMENTS ARE A BASIC REQUIREMENT OF THE SOCIETIES IN WHICH THEY OPERATE, AND REPRESENT CENTURIES-OLD PRACTICES WHICH NO AMOUNT OF INDIGNATION OR LEGISLATION CAN CHANGE. THESE UNCLASSIFIED

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BUSINESSMEN ARE RELUCTANT TO SUPPORT EITHER DOMESTIC OR INTERNATIONAL LEGAL ACTION FOR FEAR THAT SUCH MEASURES WOULD NOT ONLY DO NO GOOD, BUT WOULD ALSO BURDEN COMMERCE AND PROVIDE A DANGEROUS INSTRUMENT FOR SELECTIVE APPLICATION AGAINST INDIVIDUAL CORPORATIONS. SOME AMERICAN BUSINESSMEN MAY SHARE THIS POINT OF VIEW, BUT INCREASING NUMBERS ARE CONCLUDING THAT SOME ACTION IS NECESSARY TO DEAL WITH THE SITUATION.

8. WHAT SHOULD BE DONE? OBVIOUSLY, THE PRINCIPAL RESPONSIBILITY FOR DEALING WITH CRIMINAL ACTS IN FOREIGN COUNTRIES IS THAT OF THE GOVERNMENTS DIRECTLY CONCERNED. BUT WE TOO HAVE A RESPONSIBILITY TO MAKE SURE THAT U.S. LAWS REGULATING CORPORATE BEHAVIOR ARE VIGOROUSLY ENFORCED, AND THAT OFFICIAL U.S. PROGRAMS IN FOREIGN COUNTRIES ARE EFFECTIVELY MANAGED TO GUARD AGAINST THESE PRACTICES. THE RESPONSIBLE U.S. AGENCIES ARE ALREADY TAKING SIGNIFICANT STEPS. THE SEC AND THE IRS ARE GIVING THE PROBLEM VIGOROUS ATTENTION, AND THEIR EFFORTS CAN BE EXPECTED TO HAVE A SUBSTANTIAL DETERRENT EFFECT.

9. THE DEPARTMENTS OF STATE AND DEFENSE HAVE TAKEN STEPS TO ENSURE THAT FOREIGN GOVERNMENTS WHO PURCHASE DEFENSE

ARTICLES AND SERVICES UNDER THE FOREIGN MILITARY SALES PROGRAM ARE FULLY INFORMED OF ANY AGENTS' FEES THAT ARE INCLUDED IN THE PRICE OF THE GOODS SOLD. UNDER THE APPLICABLE REGULATIONS, THE FOREIGN GOVERNMENT IS NOTIFIED OF ANY SUCH FEE AT THE TIME OF THE DOD OFFER TO SELL. IF THE FOREIGN GOVERNMENT RESPONDS THAT THE FEE IS UNACCEPTABLE, THE AMERICAN SUPPLIER IS ADVISED THAT DOD WILL NOT

CONSIDER THE FEE AN ALLOWABLE COST UNDER THE CONTRACT.

10. IN SEVERAL CASES FOREIGN GOVERNMENTS HAVE ESTABLISHED A GENERAL POLICY THAT CONTINGENT FEES ARE NOT TO BE ALLOWED ON FMS CASES. THE USG HAS RESPONDED TO THAT POLICY BY ADOPTING A REGULATION WITH RESPECT TO SUCH COUNTRIES THAT NO CONTINGENT FEE WILL BE ALLOWED AS AN ITEM FOR REIMBURSEMENT UNLESS IT IS SPECIFICALLY APPROVED IN ADVANCE BY THE PURCHASING GOVERNMENT. WE BELIEVE THAT OUR PROCEDURES ON FMS TRANSACTIONS CAN BE FURTHER IMPROVED AND SUPPORT THE UNCLASSIFIED

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CONCEPT OF SYSTEMATIC REPORTING ALONG THE GENERAL LINES OF THE PENDING AMENDMENTS TO THE SECURITY ASSISTANCE BILL. OF COURSE, IT IS IMPORTANT THAT ANY SUCH LEGISLATION RESPECT THE LEGITIMATE NEED FOR CONFIDENTIALITY OF BUSINESS INFORMATION, THE PUBLIC DISCLOSURE OF WHICH COULD HARM THE COMPETITIVE POSITION OF AMERICAN COMPANIES.

11. BUT THIS IS AN INTERNATIONAL PROBLEM AND SIGNIFICANT PROGRESS WILL COME ONLY ON A BROAD SCALE. IT IS TEMPTING TO TRY TO DEAL WITH THE SITUATION UNILATERALLY, BUT THERE ARE SERIOUS RISKS FOR THE U.S. IN SUCH AN APPROACH. THERE IS WIDESPREAD RECOGNITION IN THE CONGRESS THAT SUCH UNILATERAL ACTION WOULD PUT U.S. COMPANIES AT A SERIOUS DISADVANTAGE IN THE EXPORT TRADE. SENATE RESOLUTION 265, ADOPTED BY A VOTE OF 93-0 LAST NOVEMBER 12, TAKES NOTE OF THE TRADE-DISTORTING EFFECT OF CORRUPT PRACTICES AND CALLS UPON THE EXECUTIVE BRANCH TO NEGOTIATE A MULTILATERAL AGREEMENT TO DEAL WITH THE PROBLEM.

12. WE HAVE SEEN DRAMATIC EVIDENCE IN RECENT WEEKS OF THE POTENTIAL CONSEQUENCES OF DISCLOSURE IN THE U.S. OF EVENTS WHICH AFFECT THE VITAL INTERESTS OF FOREIGN GOVERNMENTS. PRELIMINARY RESULTS HAVE INCLUDED SERIOUS POLITICAL CRISES IN FRIENDLY COUNTRIES, POSSIBLE CANCELLATION OF MAJOR OVERSEAS ORDERS FOR U.S. INDUSTRIES AND THE RISK OF GENERAL COOLING TOWARDS U.S. FIRMS ABROAD. MANY FOREIGN COMMENTATORS AND OPINION-MAKERS HAVE EXPRESSED CONCERN ABOUT THE EFFECTS OF U.S. PROCESSES IN THEIR COUNTRIES AND SUGGESTED THAT THE UNITED STATES HAS A RESPONSIBILITY TO TAKE INTO ACCOUNT THE INTERESTS OF ITS ALLIES WHEN IT IS CLEANING UP ITS OWN HOUSE. I WISH TO STATE FOR THE RECORD THAT GRIEVOUS DAMAGE HAS BEEN DONE TO THE FOREIGN RELATIONS OF

THE UNITED STATES BY RECENT DISCLOSURES OF UNSUBSTANTIATED ALLEGATIONS AGAINST FOREIGN OFFICIALS. AS I SAID, WE DO NOT CONDONE, NOR DOES THE UNITED STATES GOVERNMENT CONDONE, BRIBERY BY AMERICAN CORPORATIONS OVERSEAS. ON THE OTHER HAND, IT IS A FACT THAT PUBLIC DISCUSSION IN THIS COUNTRY OF THE ALLEGED MISDEEDS OF OFFICIALS OF FOREIGN GOVERNMENTS CANNOT FAIL TO DAMAGE OUR RELATIONS WITH THESE GOVERNMENTS.

13. WE THINK THERE ARE MANY ADVANTAGES TO A MULTILATERAL UNCLASSIFIED

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APPROACH WHICH IS BASED ON INTERNATIONAL AGREEMENT BOTH AS TO THE BASIC STANDARDS TO BE APPLIED IN INTERNATIONAL TRADE AND INVESTMENT, AND THE PROCEDURES TO CURTAIL CORRUPT PRACTICES. A COORDINATED ACTION BY EXPORTING AND IMPORTING COUNTRIES WOULD BE THE ONLY EFFECTIVE WAY TO INHIBIT IMPROPER ACTIVITIES OF THIS KIND INTERNATIONALLY. AN INTERNATIONAL AGREEMENT WOULD ALSO HELP ENSURE THAT ACTION WOULD BE TAKEN AGAINST THOSE WHO SOLICIT OR ACCEPT PAYMENTS AS WELL AS THOSE WHO OFFER OR MAKE THEM.

14. AS A FIRST STEP WE HAVE NEGOTIATED STRONG LANGUAGE CONDEMNING BRIBERY, AS PART OF THE VOLUNTARY GUIDELINES FOR MULTINATIONAL ENTERPRISES WHICH ARE BEING DRAWN UP IN THE OECD.

15. HOWEVER, IN THE AREA OF CRIMINAL LAW, SUCH AS BRIBERY, MORE IS NEEDED. EFFECTIVE ACTION, CONSISTENT WITH INDIVIDUAL INDIVIDUAL RIGHTS, MUST BE IN ACCORDANCE WITH ESTABLISHED LEGAL PROCEDURES. THUS, IN THIS AREA WE FAVOR ACTION PURSUANT TO NATIONAL LAW AND INTERNATIONAL AGREEMENT.

16. THEREFORE, I AM TAKING THIS OCCASION TO ANNOUNCE THAT THE U.S. IS PROPOSING A MULTILATERAL AGREEMENT ON CORRUPT PRACTICES.

17. THE AGREEMENT WOULD BE BASED INTER ALIA ON THE FOLLOWING PRINCIPLES:

- IT WOULD APPLY TO INTERNATIONAL TRADE AND INVESTMENT TRANSACTIONS WITH GOVERNMENTS, I.E., GOVERNMENT PROCUREMENT AND SUCH OTHER GOVERNMENTAL ACTIONS AFFECTING INTERNATIONAL TRADE AND INVESTMENT AS MAY BE AGREED;
- IT WOULD APPLY EQUALLY TO THOSE WHO OFFER OR MAKE IMPROPER PAYMENTS AND THOSE WHO REQUEST OR ACCEPT THEM;
- HOST (IMPORTING) GOVERNMENTS WOULD AGREE
  - (1) TO ESTABLISH CLEAR GUIDELINES CONCERNING THE USE OF AGENTS IN CONNECTION WITH GOVERNMENT PROCUREMENT AND OTHER COVERED TRANSACTIONS AND
  - (2) TO ESTABLISH APPROPRIATE CRIMINAL PENALTIES FOR BRIBERY AND EXTORTION BY ENTERPRISES AND OFFICIALS;
- GOVERNMENTS WOULD COOPERATE AND EXCHANGE INFORMA-

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TION TO HELP ERADICATE SUCH CORRUPT PRACTICES;  
-- UNIFORM PROVISIONS WOULD BE AGREED FOR DISCLOSURE  
BY ENTERPRISES, AGENTS, AND OFFICIALS OF POLITICAL CONTRI-  
BUTIONS, GIFTS, AND PAYMENTS MADE IN CONNECTION WITH  
COVERED TRANSACTIONS.

18. OUR DELEGATION TO THE SECOND SESSION OF THE UN COM-  
MISSION ON TRANSNATIONAL CORPORATIONS, NOW MEETING IN LIMA,  
HAS BEEN INSTRUCTED TO CALL FOR SUCH AN AGREEMENT.

19. AT THIS POINT, I WOULD LIKE TO SAY A FEW WORDS ABOUT  
THE LOCKHEED CASE. A NUMBER OF FOREIGN GOVERNMENTS HAVE  
EXPRESSED GREAT CONCERN ABOUT DISCLOSURES RESULTING FROM  
SENATE INVESTIGATIONS, OR REPORTS ATTRIBUTED TO THOSE  
INVESTIGATIONS, THAT ARE SAID TO IMPLICATE HIGH OFFICIALS.  
THESE GOVERNMENTS HAVE REQUESTED THE DEPARTMENT OF STATE'S  
ASSISTANCE TO OBTAIN THE DOCUMENTATION NECESSARY TO  
INVESTIGATE THESE ALLEGATIONS.

20. THE DEPARTMENT HAS ALWAYS COOPERATED FULLY WITH  
FOREIGN GOVERNMENTS WHOSE INTERESTS ARE AFFECTED BY THESE  
DISCLOSURES. BUT WE DO NOT HAVE THE CORPORATE DOCUMENTS  
IN QUESTION. THESE, WHERE THEY EXIST, ARE HELD BY  
LOCKHEED, BY THE SENATE SUBCOMMITTEE ON MULTINATIONALS  
OR BY THE SEC SUBJECT TO A COURT ORDER.

21. PRESS REPORTS HAVE GIVEN THE ERRONEOUS IMPRESSION  
THAT THE STATE DEPARTMENT HAS NOT BEEN RESPONSIVE TO THE  
REQUESTS OF FOREIGN GOVERNMENTS FOR INFORMATION DEVELOPED  
ON THIS MATTER. THIS IS NOT THE CASE. THE DEPARTMENT HAS  
BEEN CONCERNED THAT PREMATURE PUBLIC DISCLOSURE OF  
UNSUBSTANTIATED CHARGES AGAINST FOREIGN OFFICIALS MIGHT  
UNFAIRLY DAMAGE THE RIGHTS OF INDIVIDUALS AND CAUSE SERIOUS  
PROBLEMS IN UNITED STATES RELATIONS WITH OTHER COUNTRIES.  
HOWEVER, WE HAVE NEVER QUESTIONED THE NEED FOR FRIENDLY  
FOREIGN GOVERNMENTS TO HAVE ACCESS TO THE INFORMATION TO  
CARRY ON THEIR OWN LEGITIMATE INVESTIGATIONS, AND WE HAVE  
TAKEN APPROPRIATE STEPS TO FACILITATE THAT ACCESS.

22. IN RECENT DAYS WE HAVE BEEN CONSULTING URGENTLY WITH  
THE SEC AND WITH THE DEPARTMENT OF JUSTICE TO DEVELOP A  
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PROCEDURE THAT WOULD FACILITATE THE EXCHANGE OF INFORMA-  
TION WITH INTERESTED FOREIGN GOVERNMENTS. UNDER THIS PRO-  
CEDURE, THE DEPARTMENT OF JUSTICE WOULD ENTER INTO  
COOPERATIVE ARRANGEMENTS WITH THE RESPONSIBLE LAW ENFORCE-  
MENT AGENCIES OF OTHER INTERESTED GOVERNMENTS, AS IT HAS

DONE IN PAST CASES OF INTEREST TO MORE THAN ONE GOVERNMENT. IT WILL ARRANGE FOR THE EXCHANGE OF INFORMATION IN ACCORDANCE WITH THE TRADITIONAL PROCEDURES ESTABLISHED TO PROTECT THE INTEGRITY OF CRIMINAL INVESTIGATIONS AND THE RIGHTS OF INDIVIDUALS AFFECTED. THAT IS TO SAY, FOREIGN LAW ENFORCEMENT OFFICIALS WOULD BE EXPECTED TO ASSURE THAT INFORMATION SECURED FROM UNITED STATES SOURCES WOULD BE TREATED ON A CONFIDENTIAL BASIS UNTIL SUCH TIME AS THE FOREIGN LAW ENFORCEMENT AGENCY HAD DECIDED THAT IT WISHED

TO PROCEED WITH A CRIMINAL PROSECUTION AGAINST A PARTICULAR INDIVIDUAL.

23. SHOULD ANY EXCHANGE OF INFORMATION REQUIRE MODIFICATION OF THE COURT ORDER IN THE SEC-LOCKHEED CASE, THE GOVERNMENT WILL BE PREPARED TO PROPOSE SUITABLE AMENDMENTS TO THE COURT.

24. FINALLY, LET ME SAY THAT THE DEPARTMENT OF JUSTICE IS ALREADY MAKING INQUIRIES TO DETERMINE WHETHER OVERSEAS PAYMENTS AND RELATED ACTIVITIES BY LOCKHEED HAVE INVOLVED VIOLATIONS OF UNITED STATES LAW. THIS MATTER IS BEING PRESSED WITH VIGOR. IT SHOULD BE UNDERSTOOD, HOWEVER, THAT FOREIGN GOVERNMENTS HAVE AN EQUAL INTEREST IN PROSECUTING OFFENSES AGAINST THEIR LAWS, AND IN SOME CASES THE NATURE OF THE ALLEGED WRONGDOING IS SUCH THAT FOREIGN LAW ENFORCEMENT OFFICIALS HAVE AN EVEN MORE URGENT NEED TO PROCEED THAN UNITED STATES LAW ENFORCEMENT OFFICIALS. THESE VARYING PRIORITIES WILL HAVE TO BE RESOLVED BY MUTUAL DISCUSSION BETWEEN OUR DEPARTMENT OF JUSTICE AND FOREIGN LAW ENFORCEMENT OFFICIALS.

25. IN CONCLUSION, MR. CHAIRMAN, WE ARE PROPOSING TWO NEW ACTIONS TO DEAL WITH THE INTERNATIONAL BRIBERY PROBLEM. FIRST A MULTILATERAL AGREEMENT TO BE NEGOTIATED WITHIN THE UNITED NATIONS SYSTEM TO HELP DETER AND PUNISH SUCH UNCLASSIFIED

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ACTIVITIES BY ENTERPRISES, AGENTS AND GOVERNMENT OFFICIALS. SECOND, A FRAMEWORK FOR BILATERAL COOPERATION WITH FOREIGN LAW ENFORCEMENT AGENCIES WITH WHICH WE CAN MAKE SATISFACTORY ARRANGEMENTS FOR THE EXCHANGE OF EVIDENCE. WE ARE HOPEFUL THAT THESE INITIATIVES WILL PROVE TO BE EFFECTIVE. END QUOTE. KISSINGER

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